89-1570

FILED
FEB 27 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

RE:
EARLENE POLYAK — Petitioner

v

BUFORD EVANS & SONS — Respondents

FRANK HULEN AND
AND WILMA LESNANSKY — Respondents

WILMA LESNANSKY AND
FRANK HULEN — Respondents

JIM HAMILTON AND THE
CIRCUIT COURT OF
LAWRENCE COUNTY — Respondents

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
IN THE SIXTH CIRCUIT

EARLENE POLYAK
4063 Hood Road
Palm Beach Gardens
Florida 33410
(407) 627-3564
- or -
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

89 PP

QUESTIONS PRESENTED

1.Does the sale of property without ANY COMPENSATION, and without NOTIFICATION at "PUBLIC AUCTION" constitute a "taking "with out due process and in violation of the Fifth and Fourteenth Amendments?

2. Does the Court of Appeals, Tennessee, dismissal of Chancery 1974 on pro se appeal of UNAPPEALABLE JUDGMENT, and that order does not confirm sale, aviod deciding federal question and defeat federal jurisdiction of this Supreme Court by putting forth non-federal grounds on April 26, 1984?

3. Should this Court review the denial, and affirming of complaints against sale of properties without ANY COMPENSATION in Tennessee,after allowing New York Court of Appeal ruling to stand against seizure of property without JUST COMPENSATION in Seawall v New v New York City, on November 27, 1989?

4. Do injunctions deny due process?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	2
JURISDICTION	3
OPINIONS BELOW	3
CONSTITUTIONAL PROVISIONS	4
STATEMENT OF THE CASE	6
REASONS WHY WRIT SHOULD ISSUE	17
CONCLUSION	29
CERTIFICATE OF SERVICE	29

TABLE OF AUTHORITIES

	Page
28 U.S.C. 144.....	21
RULE 60.02 FRcivP	17
RULE 26 FRcivP.....	25
PARTITION IN KIND 27-26-117.....	4
City of Cleveland v Krumpansky,..... 619 F 2d 572 575(6th Cir 1980)	22
Dallo v Lemmons, 835 F 2d..... 493 505(6th Cir).....	21
Filipas v INS. 835 F 2d..... 1145 1146(6th Cir).....	21
G & Merriman Co. v Saafield,..... 241 US 22 (1916)	26
In Re: Grey Hound Lines Inc.,..... 598 F 2d 884	24
Ins.Corp.of Irelandv Compagnie,..... 456 US 694 S Ct.2099	20
Mullane v Hanover Bank & Trust,..... 339 US306314(1950)	23
Nolan v Cal.Costal Comm'n, ... 483 US 825 836(1977)	28
Seawall v N.Y. City et al,..... 534 N.Y.S. 2d 958(1988 &1989).....	4
Walker v Cty Hutchinson,352 US..... 112 77 Sc 200(1956)	24
Wrenn v Gould, 808 F 2d..... 493 505(6th Cir)	21
Wolfe v State of N.C.,..... 80 S Ct 1482 L Ed 80(1960)	26

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1989

RE:
EARLENE POLYAK — Petitioner

v

BUFORD EVANS & SONS — Respondents

FRANK HULEN AND
WILMA LESNANSKY — Respondents

WILMA LESNANSKY AND
FRANK HULEN — Respondents

JIM HAMILTON AND THE
CIRCUIT COURT OF
LAWRENCE COUNTY — Respondents

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
IN THE SIXTH CIRCUIT

Petitioner prays that a writ of certiorai issue from this Supreme Court pursuant 28 U.S.C. § 2101, issue to review the denial of filing the above complaints and demand for relief in jury trials for relief in damages on "NEW EVIDENCE" by the Honorable Thomas A. Higgins, and the affirming of this action in"DOCKET CONTROL" in the United States Court of Appeals for the Sixth Circuit

in the above cases: Earlene Polyak v Buford Evans & Sons Appeal Nos: 89-5320(D.C.1-89-X-01, Buford Evans & sons v Earlene Polyak(D.C. 1:85-0120); Earlene Polyak v Wilma Lesnansky and Frank Hulen 89-5496(D.C. 1-X-89-X-16); Frank Hulen and Wilma Lesnansky v Earlene Polyak 89-5648(D.C.1-89-X-06-1:84-0082); cons. Earlene Polyak v Frank Hulen and Wilma Lesnansky(Counter-claim) 89-5648(D.C.1-89-X-05-84-0083);

Frank Hulen and Wilma Lesnansky 89-5671 (D.C. 1:87-0075 & 1:84-0082-1:84-0083);Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County 89-5649(1=89-X-04-1:85-0116).

OPINIONS BELOW

The opinions of the Court of Appeals for the Sixth Circuit are set forth in Appendix A. The opinions of the United States District Court, Middle District, Columbia Division, of Tennessee are set forth in Appendix C, and pertinent opins from the lower Courts are set forth in Appendix C.

JURISDICTION

The orders were entered in the United States Court of Appeals were entered on November 29, and December 11, 1989, and this petition for writ of certiorari is filed within ninety days thereof.

The jurisdiction of this Court is invoked in the Constitution Articel III, Sec. 2, in which the judicial power of the United States extends to all cases of law and equity, between state and citizens of another state, between citizens of different states.

The jurisdiction is invoked in 42 U.S.C. 1981, 1982, 1983; 28 U.S.C. 1443(1)(2); 28 U.S.C. 2101, and the Fifth, Seventh and Fourteenth Amendments.

The constitutional and federal questions have been consistently raised in these cases.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the fifth Amendment provides :

No...person shall be deprived of life,

liberty; or property without due process of Law; nor shall private property be taken for public use without just compensation.
U.S. Const. Amend. V

The pertinent portion of the Seventh Amendment provides as follows:

...where the value of controversy shall exceed twenty dolloars, the right of a jury trial shall be preserved.
U.S. Const. Amend VII.

The pertinent portion of the Eight Amendment provides as follows:

... nor excessive fines imposed, nor cruel and unusual punishment inflicted.
U.S. Const. Amend VIII.

The pertinent portion of the Fourteenth Amendment provides as follows:

No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person equal protection of the laws.
U.S. Const. XIV

28 U.S.C. 1443:

(1) Against any person who is denied or cannor enforforce in the Courts of such state a law providing equal civil rights of citizens of the United States or of persons within its jurisdiction.

(2) For any act under color of authority deprived from a law providing for equal rights.

42 U.S.C.

Sec. 1981: All persons within the juris diction of the United St ates shall have the same right of in every state to enforce contracts, to sue...to the full and equal benefit of all laws.

Sec. 1982: ...to inherit, hold, purchase lease and convey real and personal property.

Sec: 1983: Every person... who under the color of any ...custom or usuage of any state...subject or caused to be subjected any citizen of the United States or other person within its jurisdiction ...deprivation of rights and priveleges ...secured by the constitution and its laws, shall be liable to the party injured in action at law in equity proceding...

28 U.S.C. In any action...where the consti tutionality of the state affecting public interest is drawn to question.

27 U.S.C.

...where the validity of a state statute is drawn into question on ground of its being repugnent to the constitution ... or where title right privelege or innunity is specially set up or claimed under the constitution...

TENNESSEE STATUTE PARTITION IN KIND 29-27-

117:

> If exact partition of property cannot be made without material injury to the parties or some one of them, the commissioners may make the partitions as nearly equal as they can and charge the larger shares the sums necessary to equalize all shares. Tennessee Code Annotated 1932.

STATEMENT OF THE CASE

On November 27, 1989. This Supreme Court left intact New York Court of Appeals ruling that New York City's SRO housing unconstitutionally confiscates private property... and has the effect of seizing property without just compensation. Seawall Associates et al.,v New York City et al.,The Associated Press, and Palm Beach Post November 28, 1989. Case No. 388 and 534 N.Y.S. 2d 958(Ct of Appeals 1988).

In leaving this ruling intact, the Supreme Court supports the federal protection of the right of private property owners for due process of the Fifth Amendnent against seizure of property without any just compensation, which extends to equal protection of just compensation provided in the Fourteenth Amendment.

In Seawall et al v New York city et al., the New York Court of appeals takes into consideration the right of the property owners, in ruling that New York City does not provide enough evidence that the few suffering loss of the deprivation of their constitutional right just compensation for their property, is of actual benefit to society.

Petitioner is denied this federal protection provided in the Fifth Amendment of due process and just compensation in seizure of her properties WITHOUT ANY COMPENSATION for sale at "Public Auction. She is denied equal protection of right to property provided in Tennessee Statute 29-27-117, and the Fourteenth Amendment(See statute p.4).

Petitioner suffers irreparable damages and the loss of a right and interest in property, loss of investment in restoration and maintenance for thirteen (13) years, without any compensation, and the loss of a right to never be regained in her retirement home.

Petitioner was not notified of the date of sale, time of sale, place of sale, and she has not been notified of any proceeds from sale on order on August 21, 1987(App.C p 57).

Petitioner only learned of sale through causal conservation with party reading notice of sale in the Lawrence County newspaper, "Advocate", and party makes Affidavit of reading notice in November, 1987(App. C.p. 54).

After learning of unconstitutional sale properties without any compensation, jury trial, without entering order for appeal, and right of redemption, Petitioner nought relief to confiscation of property without evidence of benefit to any other than parties involved in sale by Robert Boston(App. C. p.57).

Prior to sale of properties in November, 1987, his father, William Boston, Boston Bates & Holt signed order for sale October 19, 1983(App. C. p. 62).

The Honorable Thomas A. Higgins, United States District Court, Middle District Court,

Columbia Division, Tennessee, has denied all complaints and demands for jury trials for relief in this"unconstitutional confiscation" of Petitioner's properties pursuant to Rule 60.02(b) Federal Rules of Civil Procedure.

All of Petitioner's pro se petitions, motions, and applications, are disregarded,dismissed or disregarded in the District Court.She submitted complaints and demands for jury trial for relief in damages in misrepresentations by adverse parties with docket fee to reopen and reinstate cases in independent actions 60.02.

All complaints for relief in jury trials dismissed by Judge Higgins in sanction against pro se litigant for complaints against parties in plan to confiscate her properties in bias for parties and prejudice against pro se.

All appeals to the abuse of discretion and failure to rescue, and denial of filing complaints for relief in jury trials affirmed in the United States Court of Appeals for the Sixth Circuit in docket control.

The complaint and demand for relief for damages in jury trial in "unconstitutional confiscation of property without ANY COMPENSATION, and sale and transfer of United States Department of Agriculture Burley Tobacco Allotment was denied filing by Judge Higgins December 11, 1989, No. 3-89-X-16(App. B.p.33).

Application for permission to appeal was return for filing by the Court of Appeals, but denial of filing was affirmed by the Court of Appeals in docket control NO. 89-549611/29/89.

The supplemental brief of damages in loss of burley tobacco was denied filing in Court of Appeals, and although appeal was in Re:Earlene Polyak to Judge Higgins conflict of interest and failure to rescue 28 U.S.C. 144, Robert Boston was awarded nine hundred twenty-eight ($928.00) costs and attorney fees against pro se litigant **submitted five days late.**

Petition for Rehearing en banc was timely submitted on December 11, 1989, but alleged not timely by Case Supervisors. Motion for leave for

rehear disregarded and mandate issued by Clerk and motion to dismiss Robert boston fees on default and excessive misrepresentations denied.

The complaint and demand for jury trial in relief for damages in "unconstitutional sale" and"wrongful lawsut" submitted for express permission was denied filing by Judge Higgins No. 1-89-X-01.(App. B.p. 48).

The Court of Appeals affirmed denial of filing and default of Buford Evans& Sons to answer to Court of Appeals No. 89-5320.

The Court of Appeals affirmed denial of District Judge to forward records in previous case Buford Evans & sons v Earlene Polyak Counter-claim No. 1:85-0120.

Appeal affirmed December 29, 1989, in docket control, Rehearing timely submitted December 11, 1989, but motion for leave disregarded and motion stay mandate disregarded January 19, 1990. (App. A.p. 3,2,10,15 &20).

The complaint and demand for relief for damages in jury trial to reinstate case on

"NEW EVIDENCE" of unconstitutional seizure of property was denied filing in Frank Hulen and Wilma Leonansky v Earlene Polyak(Counter-claim No 1-89-X-06(1:84-0082)(App. B p.41).

The complaint and demand for relief in damages for "unconstitutional seizure of property without any compensation was denied filing by Judge Higgins 1-89-X-05 (1:84-0082). Earlene Polyak v Frank Hulen and Wilma Leonansky. (App. B.p. 44).

These cases were consolidated on appeal in the Court of Appeals No. 89-5648/50, and Robert Bosen was again awarded five hundred ($500.00) attorney costs and fees.

Petitbner's motion to dismiss by default and excessive misrepresentations nine days late without motion for leave was denied by the Clerk. The appeals affirmed on December 11 1989, and petition for rehearing denied.A second denial of rehear issued in consolidated case on 89-5648(App. A p. 22).

All motions ro stay mandates denied.

The complaint and demand for relief for damages on New evidence of unconstitutional sale of property in Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County was denied filing by Judge Higgins No. 1-89-X-04(App. B. p.37).

This complaint was lodged against Judge Hamilton in the denial of right o appeal pursuant to rule 3. TRAP, No. 1:85-0116. To 85-0116 was joined under 28 U.S.C. 1441(c) Buford Evans v Earlene Polyaki:85-0120counter-claim, but the Honorable Thomas A. wiseman disregard removal statute and remanded to state.

On November 13, 1985, Judge Wiseman enjoined pro se from District Court, and Judge Higgins continues to sanction pro se.

On April 30, 1986, Judg wiseman wrote, "That order was entered because of filings of Mrs. Polyak against various persons in this Court." The Court of Appeals disregards all appeals to denial of due process by sanction.

Appeal No. 89-5649 was timely submitted

petition for rehearing in same red priority package ans 89-5469, and 89-5320 on December 11 1989, but Clerk alleges rehearing untimely.The motion for leave for rehearing has been disregarded Clerk rehearing will be diamissed as untimly (App. A p.32).

The complaint and demand for jury trial in reopening on NEW EVIDENCE of"unconstitutional seizure of properties"in sale at Public Auction in November, 1987, as denied filing in Frank Hueln and Wilma Lesnansky(Clerks title all for Frank Hulen) No. 1-89-X-12(D.C.1:87-0075 Cp.51)

Judge Higgins denied writ of habeas corpus to bring this case before the court on which property sold at Public Auction, but it appears properties just transferred to Frank Hulen and Wilma Lesnansky.while pro se ill with heart.

Robert Boston did notify Petitioner of time,place and date of sale, and the order has not been entered for appeal and right ot redemption pursuant to Tennessee law(App. p.57).

This appeal to Judge Higgins denial filing

is fully briefed and pending No. 89-6271 (D.C.1 87-0075, but Clerk denies forward records.

The initial complaint and demand for jury trial in relief in damages against the unconstitutional seizure of properties for sale at Public Auction after representing the family since 1976, division of loyalties in negligence and malfeasance was dismissed by Judge Higgins on September 18, 1989, No. 1-86-0036 William Boston signed order 10/19/83(Cp.62).

Judge Higgins denied motion to rescue on August 3, 1989, motion for continuance and transfer case to Florida where Petitioner resides on physicians recommendations to seek a warmer climate for heart failure and related complications was denied and entire case,which she prepared for juury trial on June 20,1988, October 11, 1988, and May 1, 1989.

The Court of appeals has suspended briefing in Earlene Polyak v William Boston Bates & Holt No. after ten(10) briefs submitted in 89-6414, alleging Petitioner's appeal to Judge

Higgins delay in Findings of fact was untimely received in the District Court

Petitioner submitted complaint and demand for jury trial on NEW EVIDENCE of"unconstitutional seizure and sale of properties" after attorney Thomas Stack,Henry Henry & Stack, signed order WITHOUT ANY COMPENSATION prepared by Boston Bates & Holt on October 19. 1983, in Chancery No. 1974.

Chancery 1974, was dismissed on UNAPPEALABLE JUDGMENT in Tennessee Court of appeals on April 26, 1984, and no final order is withheld from Courts by Tennessee Courts, but Robert boston has submitted as a final order to federal Courts for award of attorney fees and costs on January 9, 1986,1:83-0083(App. c.p65)

Cases Nos. 89-5320, 89-5469, 89-5496, and 89-5648/5650 were all affirmed by same Judges MARTIN NORRIS and Contie in DOCKET CONTROL on November 29, 1989, and 89-5648/5650 were affirmed in DOCKET CONTROL by these same Judges on December 11, 1989,(14) days rehear.

REASONS WHY WRIT SHOULD ISSUE

TO REVIEW CONFLICT IN TENNESSEE COURT OF APPEALS RULING THAT PROPERTY BE SOLD WITHOUT ANY COMPENSATION SUPPORTED IN SUCCESSIVE DISMISSALS AND DENIALS FILING COMPLAINTS FOR RELIEF IN U.S. DISTRICT COURT,AFFIRMED IN DOCKET CONTROL IN FIVE CASES U.S. COURT OF APPEALS FOR SIXTH CIRCUIT, AFTER SUPREME COURT ALLOWED TO STAND NEW YORK COURT OF APPEALS RULING THAT NEW YORK CITY'S SRO HOUSING UNCONSTITUTIONALLY CONFISCATES PRIVATE PROPERTY AND HAS THE EFFECT OF SEIZING PROPERTY WITHOUT JUST COMPENSATION ON NOVEMBER 27, 1989.

This petition for writ of certiorari to issue from this Supreme Court is for review of all cases dismissed, and all cases denied filing for relief in damages from the unconstitutional seizure of Petitioner's properties without any compensation pursuant to 28 U.S, 2101.

This petition for writ includes the affirming of denials in this unconstitutional seizure of properties for sale at 'Public Auction" including five recent cases,by the same Judges in the United States Court of Appeals for the Sixth Circuit,and relief of unconstitutional sanction.

The denials of filing complaints for relief in the United States District Court,

Columbia Division, Middle District of Tennessee was affirmed by the SAME FIVE JUDGES: MARTIN and NORRIS,and CONTIE, IN FIVE CASES: 89-5496,5320, 5649 and 5648/5650 on November 29, and December 11, 1989. Petitions for rhearing within 14 days

The Court of Appeals sanctioned Petitioner for appealing the Honorable Thomas A Higgins denials of filing cases without relief in jury trial in award of costs and attorney fees of over nine hundred($900.00), and over four hundred ($400.00),untimely filed for Robert Boston.

The Court of Appeals sanctioned Petitioner for motion for disqualifcation, and motion for writ of mandamus to expidite order in 1:86-0036 (89-6514) with injunction against filing any "similar writs in the furture.

This Court can no longer sanction this denial of due process and deprivation of civil and constitutional laws and property rights in the lower courts. Rule 60.02 FRcivP provides for independent action for fraud upon the Court Pro Se suffers cruel and unusual punishment.

1. THE COURT OF APPEALS FOR THE SIXTH CIRCUIT AFFIRMING INJUNCTION AGAINST FILING COMPLAINTS FOR RELIEF DENIES DUE PROCESS AND DEPRIVATION OF PROPERTY FOR SALE AT PUBLIC AUCTION IN THE DISTRICT COURT

The Court of Appeals affirms injunction against Petitioner filing complaints for relief from damages in unconstitutional seizure of her properties without ANY COMPENSATION for sale, and sold at Public Auction.

The property including travel trailer were advertised for sale in local newspaper without notification to Petitioner and party reading advertisement makes Affidavit.

The Honorable Thomas A. Higgins entered Affidavit on June 22, 1988, but continues to deny all complaints for relief for the unconstitutional confiscation of property without any compensation in sale at Public Auction on "NEW EVIDENCE OF SALE."

The Court of Appeals for the Sixth Circuit affirms all dismissals and denials of due process in the deprivation of this property in Judge Higgins support of the Honorable Thomas A.

Wiseman's bias for local parties in letter to Court of Appeals on April 30, 1986. "That order was entered because of Mrs Polyak's filings against persons in this Court...and she should be severly sanctioned therefor"

The Court of Appeals affirming of Judge Higgins impoaing Judge Wiseman's sanction in Tennessee Court dismissals raises the question of personal jurisdiction over Petitioner and "it may not create that jurisdiction by"judicial fiat." Insurance Corp. of Ireland v compagnie et al., 456 US 694 S Ct.2099 72 L ed192.

The Court of appeals affins the District Judge's sanction against complaints for relief from unconstitutional seizure of properties without ANY COMPENSATION, sold at Public Auction with prejudicial sanction supported by own case law to award untimely appeal by Robert Boston.

This award of costs and attorney fees in appeal to Judge's denial of filing cases to Robert Boston in 89-5496 over nine hundred ($900.00), in 89-5648/5650 over four hundred

($400.00) dollars is sanction is supported with Fifipas v Lemons, 835 F 2d 1145 1146(6th Cir.)+ Wrenn v Gould, 808 F 2d 493 505(6th cir.); and Dallo V INS, 675 F 2d 581 589(6th Cir.), in added benefit for seizure property.

The Court of Appeals affirms the dismissal and denial of filing all complaints for relief for deprivation of property against constitutional due process in abuse of discretion by District Judge against 28 US CODE(372(c).

After Judge Higgins first allegations that Petitioner guilty without naming time place and date for her to defend herself, and dismissal of case staing that she must have a physicians medical certificate to appeal i. District Court, she submitted motion to disqualify in 1:86-0036 and all cases involving her and her property, And second writ to expidite same case1:86-0036.

The court of Appeals injunction 89-6414 suports Judge conflict of interest and failure to rescue, and sanctions Petitioner against any further writ of mandamus for relief again with

order of the Sixth Circuit,City of cleveland V Krumpansky, 619 F 2d 572 575(6th Cir 1980).

The Court of Appeals denial writ of mandamus conflicts with Rules of the Judicial Counsel of the Sixth Circuit and federal laws.

Rule 1(e) pertains to change of decision or Judicial Ruling provides for motion for disqualification, and to force ruling in writ of mandamus(89-6414 to expidite 1:86-0036,9/29/89)

Judge Higgins denied timely motion to disqualify on September 24,1987(1:87-0075,and Motion to Rescue,1:86-0036,9/18/89 28USC 144:

> Whenever a party at any proceedinqin a district court makes and files a timely affidavit that a judge before whom a matter id pending has a personal bias against him or in favor of party, Judge shall proceed no further, but another judge shall be assigned to hear proceeding.

2. THE COURT OF APPEALS AFFIRMS DENIAL OF DUE PROCESS IN NOTIFICATION OF SEIZURE OF PROPERTIES SOLD AT PUBLIC AUCTION WITHOUT ANY COMPENSATION AND SALE IS UNCONSTITUTIONAL CONFISCATION

The Court of Appeals affirms seizure of of properties sold without any compensation

in denial of federal protection of just compensation provided in the Fifth Amendment.

Petitioner's properties have been sold without this Fifth Amendment protection provided through the Fourteenth Amendment of equal protection of due process and just compensation provided in right and servalty in Partition in Kind 29-27-117(See statute p 4).

Petitioner has not been notified of place of sale, time of sale, amount of proceeds, and the order has not been entered for right of appeal Rule 3 TRAP, and right of redemption in action,"which will affect interest in life, liberty, or property protected by Due Process Clause of the fourteenth Amendment Mullane v Central Hanover Bank & Trust, 339 US 306 314 70 S ct 652, 94 L Ed. 865(1950).

On October 27, 1989, Petitioner found self addressed letters in Chancery and Circuit Court of Lawrence County, and she has defended her right and interest in properties since1983.

The Court held that notice of condem-

> nation proceedings published in local news paper was inadequate means of informing a landowner whose name was known to the city. Walker v City of Hutchinson, 352 US 112, 77 S Ct200, 1L Ed 2d 178(1956).

Neither Robert Boston's order for sale of properties on August 21, 1987, nor his farher's, William Boston, Boaton Bates & Holt, on October 19, 1983, awarded ANY COMPENSATION, but William Boston awarded attorney fees (See order).

Petitioner only learned of advertised sale through casual conservation with party making affidavit after six(6) months. She places add in November 1987.(Case No. 1:87-0075).

On September291987, Judge Higgins remanded Petitioner's Complaint and Counter-claim for jury trial timely under removal statute submitted on August 24, 1987, and within three (3) days of Robert Boston'order August 21, 1987.

> And some of the cases imply that permitting remand of pendent state claims denied defendant protection of the removal statute and encourgages manipulative dismissals. In Re. Grey Hound Lines Inc. 598 F 2d 884.

Property sold after remand 1:87-0075,Nov 87.

3. THE COURT OF APPEALS DISREGARDS FEDERAL RULES IN RES JUDICATA AND COLLERTAL ES - TOPEL IN AFFIRMING UNCONSTITUTIONAL SEIZURE OF PROPERTIES WITHOUT ANY COMP- SATION SOLD AT PUBLIC AUCTION

The Court of Appeals disregards federal rules in all allegations of res judicata in manipulative dismissals on Tennessee case law.

Rule 26 FRcivP RES JUDICATA,COLLATERAL ESTOPEL takes president to state case law used by the Court of Appeals to affim unconsti tional seizure of properties without any com- pensation and the denial of filing complaints for relief in jury trials in District Court.

The allegations that state case fully litigated are from misrepresentations of adverse party and in violation of Federal Rule 60.02(b) federal Rules of Civil Pro- cedure.(Cases 1:84-0082 and 1:84-0083).

Robert Boston submitted materials from Tennessee Chancery 1974 Frank Hulen and Wilma Lesnansky v Earlene Polyak in 1:84-0082, and Judge Wiseman awarded costs and attorney fees in error. Case 1974 was dismissed on pro se

appeal to UNAPPEALABLE JUDGMENT in misrepresentation of hearing on December 19, 1983, prepared by disloyal and adverse parties in Chancery 1974,Tennessee Court of Appeals No.83-405-II. There is no final order in this unconstitutional confiscation of properties for sale at PUBLIC AUCTION dismissed on April 26, 1984.

> A state may not avoid deciding federal questions and defeat jurisdiction of United States Supreme Court by putting forth non-federal grounds of decision which are without any fair substantial support. Wolfe v State of N.C.,80 S Ct 1482 5 LEd 80(1960).

The District Court's award of costs and attorney fees as res judicata 1:83-0083 in fully litigated state case conflicts with Supreme Court.

> Supreme Court has stated it as"familiar law"that only final order res judicata. G & Merriman Co. v Saafield, 1916 241 US 22

In Rule 26 Federal Rules of Civil Procedure exceptions provides that a part or all claims subsists as a basis for second action for Plaintiff in the following circumstances:

(c) The judgment in the first action was

> plainly inconsistent with a fair and equitable implementation of a statutory scheme
>
> (e) For reasons of substantive policy in a case involving a continuing wrong Plaintiff is given option to sue from time to time for damages...

Petitioner contends that the judgment in the first order for sale of property without any compensation for restoration and maintenance of the house on her agreed partition at her own expense since settlement by agreement in 1976 for thirteen (13) years for a retirement home is plainly inconsistent with equitable implementation of statutory scheme provided in Tennessee Statute Partition in Kind 29-27-117 without jury trial and appeal.

Petitioner contends that for reasons of substantive policy involving a contiunuing wrong supports her complaints and demands for relief in jury trials in all of these cases.

Petitioner contends that as Local Rule 9 violated Plaintiff's right in New York City, the confiscation of her properties in state, other than where she resides in Florida.

without notification in equal protection of state statute and constitution, and without any compensation for "public Auction" violates her due process rights and constitutes a taking of her properties for public use without just compensationin violation of the Fifth and Fourteenth Amendments to the constitution of the United States. Seawall et v New York CitySupra.

> ...interferes with ...use of property.. as to constitute taking.Nolan v Cal. Costal comm'n, 483 US 825 836 17 Sct 3141 3147 97 LEd 2d 677(1977).

Although Petitioner's properties are located about thirty(30) milen below Gerneral Motors "Saturn Plant" Spring Hill Tennessee, the Courts and parties involved in seizure of properties without any compensation, have not provided any evidence of public need, or that she should suffer for many in this irreparable damage in the loss of her properties, and the loss of a right to never be regained in her retirement home. Restrained since order 1983.

CONCLUSION

Petitioner prays that a writ of certiorari issue to review all of these appeals to this unconstitutional seizure of her properties without any compensation, relief from unconstitutional injunctions and that all case be returned for relief in jury trials before unbiased District Court.

On the 23rd day of February, 1990.

Respectfully submitted,

Earlene Polyak(313) 675-627
4063 Hood Road
Palm Beach Gardens,
Florida 33410

Certificate of Service

I certify that a true copy of this pleading has been mailed to the Honorable Charles Brunson, Nashville, Tennessee,37203,Solicitor General, Washington D.C. 20530, Robert Boston 2100 One Commerce Place, Nashville, Tennessee 37239, and Buford Evans & Sons, Lawrenceburg, Tennessee 38464.

Earlene Polyak

STATE OF FLORIDA
COUNTY OF PALM BEACH

Notary Public _____ My comm.expires:

APPENDIX A

In the United States Court of appeals for the Sixth Circuit.

Frank Hulen and Wilma Lesnansky v Earlene Polyak 89-5648(D.C.1:84-0082 & 1:84-0083).

Earlene Polyak v Frank Hulen and Wilma Lesnansky 89-5650(D.C.1:84-0082 & 1:84-0082).

Earlene Polyak v Buford Evans & Sons 89-5320(D.C. 1:85-0120 Buford Evans v Earlene Polyak Counter-claim).

Earlene Polyak v Jim Hamilton and the Circuit Court of lawrence County 89-5649(D.C 1:85-0116).

Earlene Polyak v Wilma Lesnansky and Frank Hulen 89-5469(1:84-0082 & 1:84-0082).

Denied on November 29, and December 11, 1989. Petitions for Rehearing submitted within fourteen days on December 11, 1989, but Clerk alleged untimely and motion for leave disregarded stating petition for rehearing would be denied and mandate issued 89/5649/5496/5320.

Before: MARTIN NORRIS Circuit Judges,and CONTIE, Senior Circuit Judge.

NO. 89-5496
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED JAN 19 1990

v

WILMA LESNANSKY AND
FRANK Hulen

Upon consideration of appellant's motion to stay awared of costs and attorney fees pending service of objection,

It is ORDERED that the motion be and it hereby is denied.

Further condidering appellant's motion to stay mandate,

It is ORDERED that the motion be and it hereby denied.

The motion for rehearing en banc will be rejected as untimely.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk

No. 89-5496
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED JAN 19 1990

v ORDER

WILMA LESNANSKY AND
FRANK HULEN

Upon consideration of application for assessment of attorney fees and costs in the amount of $928.70,

It is ORDERED THAT THE application be and it is hereby granted.

ENTERED BY ORDER OF THE COURT

Note: This application was obtained for objections by long-distance call to Court.It was due within fourteen days of November 29, 1989, on December 13, 1989, but it was filed untimely without leave on December 18, 1989.

Earlene Polyak
1-22-90

NO. 89-5496

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

FILED NOV 29 1989

Plaintiff-Appellant

v

NOT RECOMMENDED FOR
FULL-TEXT PUBLICATION

BEFORE: MARTIN and NORRIS, Circuit Judges; and
CONTE, Senior Circuit Judge.

This case has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the briefs on record, this panel unanimously agrees that oral argument is not needed. Fed.R. App.34(a).

Earlene Polyak, a pro se Michigan resident, appeals from a district court's order directing the Clerk of the district court not to file a complaint which she has submitted. The complaint tendered by Ms. Polyak is another in a contiusous series in which she attempts to relitigate the results of a Tennessee state court action. The Tennessee state court litigation involved a suit filed against Mrs. Polyak by her siblings which resulted in

the partition sale of a tract of land and dwelling which they has inherited as tenants in common from theri parents. Mrs Polyak had sought to overturn the Tennessee court decision by instituting numerous federal court actions against the parties to the state litigation.

Due to the increasing number of actions filed by Mrs. Polyak,the district court had previously entered an order enjoining her from filing further suits concerning the afor mentioned litigation without express permission of the court.. In accordance with its order, the district court reviewed Ms. Polyak complaint,found it to be a reiteration of allegations in her previous complaints, and denied her permission to file the complaint After the district court denied MS.Polyak's subsuquent petitione for rehearings, she filed timely appeal. In addition, Ms Polyak has filed a separate motion with this court seeking to add the records in cases 89-5650, 89-5649, and 89-5648 to this case because she

believes the district court has withheld the records in these cases.

Upon review, we shall affirm the district court's judgment(order) and deny Polyak's motion to add the records in cases nos. 89-5650, 89-5649 and 89-5648. We shall also impose sanctions against Polyak for bringing this frivolous and vexatious appeal.

First, we note that this court has previously approved the practice of a district court requiring prolific litigators to obtain leave of a court before any further complaints will be accepted for filing. See Filipas v Lemons, 835 F. 2d 1145,1146(6th Cir.1987 order

Furthermore, Polyak seeks in this case to relitigate issues which are already the subject of a final judgment (sic.hearing)of Tennessee courts. Affording the same res judicata effect to the Tennessee Court judgment as wou. the Tennessee courts, Migra v Warren City School Dist of Ed.,465 U.S. 75(1984); Whitfield v City of Knoxville, 756 F 2d 455, 459-60 (6th Cir. 1985), we conclude that the doc

rine of res judicata clearly bars Polyak's attempt to relifigate the state court judgment(sic hearing) since under Tennessee law res judicata bars consideration of all claims which were or reasonably could have been litigated by the parties in the state court action Grange Mutual Co. v Walker, 652 S.W. 2d 908, 909-10(Tenn. Ct.App. 1983);American Nat'l Bank & Trust v Clark,586 S.W.2d 825 826 27 (Tenn.1979).

Further, although Polyak has raised allegations of new evidence, we are satisfied after review of her complaint, that these allegations are a mere pretext for another attack on the state court judgment(sic hearing).Most of the sections in Polyak's complaint labelled new evidence " relate either to events which occured prior to Tennessee state court judgment(sic hearing) or to subsequent events which occurred in the course of her numerous lawsuits. Further, although she raises allegations concerning the transfer of a United States Department of Agriculture burley tobacco

allotment, she requests no relief for this alleged transfer in her complaint(sic trial).

finally, we conclude that this case is appropriate for the applications of sanctions. Wrenn v Gould, 808 F 2d 493 505(6th Cir.1987) 108 S.Ct 1032(1988); Dallo v Ins., 765 F 2d 581,589(6Cir. 1985). We note that this court has already issued 19 orders dealing with Polyak's various attempts to overturn the Tenn essee state court decision.[1] Moreover, as this caseis one of five additional appeals filed by Polyak against the parties of the Tennessee litigation,[2] Polyak's frequent attempts to re-litigate a final state court judgment(sic hearing)in this court show no likelihood of abating. We cannot state strongly eneough our disapproval of Polyak's tatic of venting her displeasure with the results of the Tennessee action by unwarranted harassement of her numerous defendants in the federal courts.Therefore, due to the frivilous and vexatious nature of this appeal we are granting appe-

llees' request for attorney fees and costs pursuant to 28 U.S.C. 1912.

Accordingly, it is hereby ORDERED that the judgment(sic order) of the district court be affirmed pursuant to Rule 9(b)(5) Rules of the sixth Circuit, and that Polyak's motion to add the records in cases nos 89-5650, 89-5649 and 89-5648 be denied. Appellees in this matter are hereby assigned damages equal to their re wonable fees and costs. An itemized and verified bill for the costs and attorney fees should be filed with the Clerk of this court, with proof of service, within fourteen days after entry of this order.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

1/24/90

No. 89-5649

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED JAN 19 1990

v

ORDER

JIM HAMILTON AND THE
CIRCUIT COURT OF
LAWRENCE COUNTY

Upon consideration of appellant's motion to recall mandate,

It is ORDERED that the motion be and it hereby is denied.

The motion for rehearing en banc will be denied as untimely.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green Clerk

NO. 89-5649

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED NOV 29 1989

Plaintiff-Appellant

v NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

JIM T. HAMILTON, Individually and in Judicial capacity as Circuit Judge and the Circuit Court of Lawrence County

Defendants-Appellees

BEFORE: MARTIN and NORRIS, Circuit Judges and CONTIE, Senior Circuit Judge.

This case has been referred to a panel of the court pursuant to Rule 9(a) Rules of the Sixth Circuit. Upon examination of the briefs and record, this panel unanamiously agrees that oral argument is not needed.Fed.R.34(a).

Earlene Polyak, a pro se Michigan resident appeals from the district court's order directing the clerk not to file a complaint which she has submitted.

The complaint attempts to relitigate a Tennessee state court action which resulted in the partition sale of land that Polyak and

her siblings had inherited as tenants in commom. In this complaint, Polyak seeks to reopen via Federal Rule 60(b) (sic Fed.Rule 60.02(b) her earlier action against appellees, The Tennessee trial court judge and Lawrence County (Tennessee Circuit Court, brought pursuant to 42 U.S.C. § 1983. Polyak avers that she has a newly discovered evidence requiring reopening the complaint. (sic state hearing judge).

In accordance with its earlier order enjoining Polyak filing further litigation regarding the state court action without express permission of the court reviewed Polyak's complaint and denied permission to file it. After the denial subsequent motion for reconsideration, Polyak filed a timely motice of appeal. In addition, Polyak has also filed a motion seeking to supplement the record in this case with the record in No. 89-5648(sic 89-5648/89-5650).

Upon review, we affirm the district court judgment and deny the motion to supplement the record.

First, although Polyak seeks to add the record from No. 89-5648(sic 89-5648/89-5650) to this record, that record has already been forwarded to this court and will be considered separately.

Second, this court has approved the practice of the district court requiring prolific litigators to obtain leave of the court before any further complaints will be accepted for filing. See Filipas v Lemons, 835 F.2d 1145, 1146(6th Cir. 1987 order).

Furthermore, Polyak's allegations that she has newly discovered evidence which mandates the reopening of her previous §1983 action against appellees are meritless.

Although Polyak asserts that she has a newly discovered evidence for reopening case a review of her complaint shows that it is merely a restatement of events which occured in course of the Tennessee state court action and subsequent appeal. However, A Rule 60(b) motion is properly denied when the movant attempts to use such motion to relitigate the

merits of his claim and his allegations are unsubsstatniated(sic) See Mastini v American Tel. and Tel.C. #¢(F.2d 378, 378(2d Cert denied, 387 U.S. 933(1967). Finally, we conclude that Polyak's Rule 60(b)(sic. Rule 60. 02(b)FRcivP) motion was properly denied because even if some of the allegations concern new evidence it would unlikely produce a different result in her §1983 action. Mc Knight v United States Steel Co., 726 F.2d 333,336-37 (7th Cir. 1984). The defendants in Polyak's §1983action were the state trial judge(sic hearing)and circuit court. However, judges are immune for damages based on their judicial actions under §1983. Stump v Sparkman,435 U.S. 349(1978).

Accordingly, the district court's judgment is hereby affirmed and the motion to supplement the record is hereby denied pursuant to rule 9(b)(5), Rules of the sixth Circuit.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED JAN 19 1990

v Order

BUFORD EVANS & SONS

Upon consideration of appellant's motion to recall mandate,

It is ORDERED that the motion be and it hereby denied.

the motion for rehearing enbanc will be denied as untimely.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green Clerk

No. 89-5320

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED NOV 29 1989

Plaintiff-Appellant

v NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

BUFORD EVANS & SONS

Defendants-Appellees

BEFORE: MARTIN and NORRIS, Circuit Judges, and CONTE; Senior Judge.

This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the briefs and record, this panel unanimously agrees that oral argument is not needed. Fed. R.App. 34(a)

Earlene Polyak, a pro se Michigan resident, appeals from the district court's order directing the clerk of the district court not to file a complaint which she submitted.

Polyak's complaint is another attempt to overturn the results of a Tennessee state court action by relitigating(sic) the issues involved in that proceeding. The Tennessee litigation involved a suit against Polyak by her

siblings which resulted in the partition suit sale of land and a dwelling they has inherited as tenants in common from theri parents.Appellee Buford Evans and sons surveyed the disputed property involved in the Tennessee litigation in order to determine if it could be equitably partitioned between the litigants. Polyak states in her present complaint that she has discovered new evidence concerning the invalidity of the survey performed by appellees.

Based upon the increasing number of actions brought by Polyak, the district court entered an earleir order enjoining her from filing any further litigation concerning the Tennessee court action without express permission of the court.Thus, the district court reviewed Polyak's instant complaint, found that it was barred by res judicata, and denied permission to file the complaint.After the district court denied Polyak's subsequent petitions for a rehearing, she filed timely appeal In addition, Polyak has filed a motion to supplement the record.

Upon review, we affirm the district court judgment(sic order) for the reasons stated by that court and deny the motion to supplement the record.

First, the motion to supplement the record because a similar motion to consolidate nos. 89-5320 and 89-8507 (sic 89-5648/5650) has been denied.

Second, this court has already approved the practice of a district court requiring proflic litigators to obtain leave(sic expermission requested) of the court before filing further complaints,See Filipas v Lemon 835 F 2d 1145,1146(6th Cir. 1987 order). More over the district court has properly concluded that the doctrine of resjudicata bars Polyak's complaint. Despite Polyak allegation of new evidence, the actions which form the core of her complaint were already commited by the parties or their counsel in the further ance od state court action. Affording the same res judicata effects to Tennessee state court judgment(sic hearing order) as would

the Tennessee courts, Migra v Warren City School Dist,Bd. of Educ., 465 U.S. 75(1984); Whitfield v City of Knoxville, 756 F 2d 455, 459-60)(6th Cir. 1985), we are of the opinion that the doctrine of res judicata, as applied in Tennessee, bars the claims which Polyak seeks to raise.

Accordingly, the judgment of the district court is hereby affirmed and the motion to supplement the record is hereby denied pursuant to Rule 9(b)(5) Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed leonard Green

No. 89-5648/5650

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CICUIT

FRANK HULEN AND FILED FEB 5

V ORDER

EARLENE POLYAK

BEFORE: MARTIN and NORRIS, Circuit Judges;
CONTE Circuit Judge

Upon consideration of the appellant's motion to dismiss award of costs and attorney fees on default,

It is Ordered that the motion be and it hereby denied.And further considering the appellee's motion for assessment of attorneys fees and costs, with consideration of appellant response in opposition,

It is ORDERED that the motion be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

V

FRANK HULEN AND
WILMA LESNANSKY

Upon consideration for application of assessment of attorney fees and costs in the amount of over $400.00

It is hereby ORDERED snd be hereby granted.

ENTERED BY ORDER OF THE COURT

NO. 89-5648/5650

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN AND
WILMA LESNANSKY

FILED FEB 6 1990

V

ORDER

EARLENE POLYAK

Before: MARTIN and NORRIS Circuit Judges, and
CONTE Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members, but also to all other active judges of this court, and no judge having requested vote on the suggestion for rehearing en banc.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

No. 89-5648/89-5650

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN AND
WILMA LESNANSKY

Plaintiff-Appellees

v

EARLENE POLYAK

Defendant-Appellant

FILED DEC 11 1989

NOT RECOMENDED FOR
FULL-TEXT PUBLICATION

BEFORE: MARTIN and NORRIS Circuit Judges and
CONTE, Senior Circuit Judge.

These cases have been referred to a panel of the court pursuant to Rule 9(a) Rules of the Sixth Circuit. Upon examination of the briefs and record, this panel unanimously agrees that oral argument is not needed Fed. R. App. 34(a).

Earlene Polyak a pro se Michigan resident appeals from the district court's orders directing the clerk of the district court not to file complaints which she submitted in these cases.

these cases were further attempts by Polyak to overturn the results of a Tennessee

state court action which resulted in the partition sale of land which she inherited along with her siblings as tenants in common. The appellees herein are Polyak's siblings. Polyak makes no new allegations in these complaints, rather she seeks to relitigate(sic her federal court actions by characterizing these complaints as Fed.R.Civ.P.60(b)(sic Fed. R 60.02(b) FRcivP) motions. Polyak asserts two grounds for restarting her federal litigation:(1) her petition for rehearing denined by the Unites States Supreme Court on February 21, 1989,See Hulen et al. v Polyak,87-627/62-78(6th Cir. June 16, 1988) reh'g denied 109 S. Ct 1180(February 21, 1989, and she believes that rule 60(sic. Rule 60.02(b)FRcivP) gives her authority to restart the litigation in district court; and (2) she has no forum for relief in Tennessee Courts because on March 8, 1989, the Clerk of the Tennessee Supreme Court stated in a letter th her that "there is nothing further to appeal in this case in any of the appellate courts Tennessee

In accordance with its earlier order enjoining Polyak filing further litigation concerning the Tennessee action without express permission of the court, the district court reviewed the complaints and denied permission to file them. After the subsequent denial of her mtoion for reconsideration, Polyak filed these timely appealss. further, Polyak has also filed motions challenging the district courts denial of her motion to forward records in the cases in this court.

Upon review, we affirm the district court judgment(sic order) , dney Polyak's motions, and award sanctions against Polyak for bringing these frivilous and repetitive appeals.

First, Polyak's motions to supplement the records in these cases are now moot since the district court has forwarded the certified records in both cases to this court.

Second, we have already approved the practice of requiring profilic litigators to obtain leave(sic express permission in complaint) of the court before any further com-

Wrenn v Gould, 808 F 2d 493 505 (6th Cir 1987). 108 S Ct 1032(1988); Dallo v Ins. 755 F 2d 581 589(6th Cir 1985). We note that this court has already issued 19 orders dealing with Polyak's various attempts to overturn the Tenn essee state court decision. Moreover, as these cases are two of five additional appeals filed by Polyak against parties of the Tennessee liti gation , Polyak's frequent attempts to religa-tigate(sic) a final state court judgment(sic no final order in state case) in this court show no likihood of abating. We cannot state strongly enough our disapproval of Polyak's tactic of venting her displeasure with the re-sults of the Tennessee action by unwarranted harassement of her numerous defendants in the federal courts. Therefore, due to frivilous and vexatious nature of these appeals we are granting appellees' request for attorney fees and costs pursuant ot 28 U.S.C. §1912.

Accordingly, it is hereby ORDERED that the judgment (sic order) of the district court

plaint will be accepted for filing See Filipas v Lemons, 835 F 2d 1145 1146(6th Cir.1987 order. Moreover, Polyak cannotinstitute new, independent action seeking to relitigate (sic) the Tennessee state court judgment(order) by characterizing her complaints as Rule 60 motion (sic Rule 60.06 FrcivP). Rule 60 contemplates only relief from a final judgment and does not authorize relitigation(sic) of matters settled in original judgment(sic Order) See Donovan v Sovereign Sec., Ltd.,726 F 2d 55, 60(2d 6th Cir 1984).

Furthermore, Polyak cannot restart litigation which became final merely by styling her complaint as Rule 60 motions(sic Rule 60.02(b) FrcivP. In this situation, Polyak's two main assertions are sufficient to overcome the principle that sooner or later litigation must come to an end. See Boughner v SeCretary of Health, Educ & Welfare, 572 F 2d 976 978(3d Cir 1978).

Finally, we conclude that these cases are appropriate for the applications of sanctions

be affirmed pursuant to Rule 9(b)(5), rules of the Sixth circuit, and that the motions to supplement the records are hereby denied. Appellees in thse cases are hereby assigned damages equal to their reasonable attorney fees and costs. An itemized and verified bill for the costs and attorney fees should be filed with the Clerk of this Court with proof of service, within fourteen days after the entry of this order.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

No. 89-6514

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RE: EARLENE POLYAK FILED JAN 25 1990

Petitioner ORDER

BEFORE: MARITN and RYAN, and PECK Senior Circuit Judge.

Petitioner seeks writ of mandamus (1) directing Jusge Thomas A Higgins to rescue himself from Polyak v boston et al., Dist No. 1:86-0036, and any other regarding (petitioner and her properties, and(2) vacating a September 15, order dismissing action. The District Court has submitted docket sheet.

The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations where the petitioner can show a clesr and indisputable right to relief sought. Will v Calvert Ins. Co. 437 US 655 661-2(1978);Kerr v US District Court, 426 US 394 405-3(1976) It cannot be used as a substitute for an appeal. City of Clevand v Krumpansky, 619 F2d 575 (6th Cir)449 US 834(1980).The petitioner has

has appealed the final order in her action and that appeal is docket with this court 89-6414 Polyak v Boston et al. All the assertions raised by the petitioner in this petition may be reviewed by the Court as part of the appeal We will not review by means of writ of mandamus petition that which may be reviewed by a direct appeal. Moses M. Cone Mem. Hospital v Mercury Cons. Co. 460 US 1,8,n6(1983).

to the extent the petitioner seeks disqualification of Judge Higgins as to any other litigation involving the petitioner, we note this id her third attempt to obtain such releif by writ of mandamus NO. 89-5066 88-5884 Feb. 17, 1989;88-5884(6th Cir. Sept. 1, 1988. We have stated in clear language that mandamus review is not available in such matters In Re City of Detroit, 828 F2d 1160,1165-67(6th Cir) 1987. **Because of this frequent and frivilous litigation amounts to abuse of this Court's docket, we conclude she should be barred from filing similar petitions in the future.**

It is therefore ordered that the present writ of mandamus is denied. The Clerk is instructed not to accept from the petitioner any future mandamus petitions seeking the disqualifications of a district court judge.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
FILED JAN 18 1990

NO. 89-6414/90-5015

The court having determined that consolidation of the above causes for the purpose of briefing and submission is appropriate,

It is ordered that the causes be and hereby are consolidated for the purpose.

It is further order that tbe briefing schedule in 89-6414 be and hereby vacated.

Signed Leonard Green

Note: Ten briefs timely submitted before schedule vacated on January 14, 1990 in 89-6414/90-5015. NO FURTHER SCHEDULING.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FEB 2 1990

Case No. 89-5320
Polyak v Evans

CaseNo.89-5469
Polyak v Hamilton

Case No. 89-6271
Hulen v Polyak

Case No.89-6414/5015
Polyak v Boston

The following motions will be retained as correspondence but will not be ruled upon by CHIEF JUDGE or by the panels which reviewed your appeals;the motion for reconsideration of the order in appeal no. 5320 denying your motion to stay mandate,and the separately received motion to recall mandate, the motion to recall mandate in 89-5649 and the motion for reconsideration in no. 5469,and the motion to stay which bore all three case numbers.In each appeal the mandate issued properly...

The Court no longer has jurisdiction to entertain any documents however titled in the appeals. Anything uou submit from this date will be kept as correspondance ...

Signed Janice Yates
Chief Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

v

WILMA LESNANSKY ET AL

FILED 1-31-89

GENERAL DOCKET NO
3-86-X-16
Judge Hiffins

ORDER

In accordance with the memorandum contemp entered the Clerk is directed not to file the complaint submitted by Earlene polyak. The Clerk is directed to assign an General docket No. to the complaint and forward copies of this order and accompanying memorandum to those parties Ms. Polyak named as defendants. Finally the clerk is directed to return check for filing fee submitted, unissued summons, and any extra copies of the complaint to Ms. Polyak

Signed Thomas A Higgins

Note: the following orders denying filing in the District Court are composed of mere sequence of prejucicial proceeding in cases.

Earlene Polyak
2-23-90

APPENDIX B

In the United States District Court, Columbia, division, Middle District of Tennessee $105.00 docket fee paid all cases.

Earlene Polyak v Wilma Lesnansky and Frank Hulen 3-89-X-16(1:84-0082 & 1;84-0083).

Earlene Polyak v Buford Evans & Sons 1-89-X-01(Buford Evans & sons v Earlene Polyak Counter-claim No. 1:85-0120.

Earlene Polyak v Jim Hamilton and the Circuit Court of Lawrence County 1-89-X-04 (1:85-0116).

Earlene Polyak v Frank Hulen and Wilma Lesnansky 1-89-X-05(1:84-0083).

Frank Hulen and Wilma Lesnansky f Earlene Polyak 1-98-X-06(1:84-0082).

Frank Hulen and Wilma Lesnansky v Earlen Polyak 1-89-X-12(1:87-0075(0082 &84-0083).

Earlene Polyak v William Boston Boston, Boston Bates & Holt1:86-0036(89-6414/90-5105)

Presiding:The Honorable Thomas Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK — FILED -1-31-89

v — General Docket No. 3-89-X-16

WILMA LESNANSKY AND
FRANK HULEN

MEMORANDUM

the court is in redeipt of a complaint submitted by Earlene polyak. Ms. Polyak also submitted a complaint styled Earlene polyak v Buford Evans & Sons. These complaints are the latest in a series of cases that Ms. Polyak has filed in this District. the facts giving rise to all of the seven previously filed cases involve a property dispute in Lawrence County, Tennessee or acuilliary disputes subsequent to the state court order that property be partitioned(SIC SOLD).

After filing her first compalint grounded upon the same dispute this court dismissed a third case and enjoined Ms. Polyak from filing further litigation in this Court regarding the sale of the property or the state litigation

concerning the sale without express permission of the Court. Polyak v Hamilton No 1:85-0016 (M.D. Tenn. Nov 13, 1985).Pending was the fourth case that ms. Polyak attempted tp remov from the Circuit Court of Lawrence County in which she had been sued by a surveyor to collect his fees. that case was remanded to lawrence county Circuit Court and Ms. Polyak cautioned to seek legal advice before filing further frivilous suits(1:85-0120M.D.Tenn Nov. 26, 1985). At time of order Ms. Polyak had tendered a petition for rmoval which the Clerk was directed not to file(sic 1-85-X-108Earlene Polyak v William Boston bates & Holt pursuant to previous injunction)M.D. Tenn Nov. 20 1985 (1:86-0036).

Ms Polyak filed three additional complaints two of which alleged causes of action against former attorneys involving Lawrence property.The complaint seeking removal was remanded to lawrence Chancery Court 1:87-0075 (M.D. Tenn.Sept. 29, 1987). By Specific order,

the court allowed Polyak v Boston 1:86-0036 M.D. Tenn, May 12, 1986;Polyak v Stack 1:85-0125(M.D.Tenn.Dec. 3,1985).

Ms Polyak again submitted a complaint containing about the disposition of the lawrence County Property and state proceedings.she has added allegations of NEW EVIDENCE referring to of United States Department of Agriculture Burley tobacco allotment by wilma Lesnansky to Frank Hulen in 1988, as well as observation in in 1988 that part of the lot had been plowed, Her prayers fro relief seek MONETARY ans INJUNCTIVE RELIEF IN REGARD TO THE PROPERTY.

The transfer of the tobacco allotment and alleged and alleged alterations and/or damages still revolve aroung property dispute. All Claims alleged in this complaint barred by res judicata. the clekr is directed not to file complaint and mail copies of order to parties.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

FILED 4-10-89

v

GENERAL DOCKET NO.
1-89-X-04

1:85-0116

JIM HAMILTON ET AL

JUDGE HIGGINS

ORDER

In accordance with the memorandum contemporaneously entered, the clerk directed not filed the complaint submitted vy Earlene Polyak as a regular case.The Clerk is further directed to assign a General docket number to the compalint and forward copies of this order and memorandum to those parties whom Ms. Polyak has named defendants in conplaint and to Attorney Charles Brunson. Finally, the Clerk is directed to return $120.00 check submitted as a filing fee with the complaint and unissued summons to Ms. Polyak.

It is ORDERED.

Signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK — FILED 4-10-89

v — GENERAL DOCKET
1-89-X-04
1:85-0016

JIM HAMILTON ET AL — JUDGE HIGGINS

MEMEORANDUM

The Court is in receipt of a complaint by Earlene Polyak. This complaint is the 11th complaint Ms. Polyak has filed or attempted to file in this Court, alleging facts arising from property dispute in Lawrence County,Tennessee. In this complaint, Ms. Polyak seeks to reopen on new evidence the controversy that has been litigated in both state and federal Court.

Apparently spurred by her receipt of a recent letter from the Clerk of Tennessee Supreme court, who advised her that there was nothing further to appeal in Tennessee courts. Ms. Polyak now seeks relief under Rule 60(sic Rule 60.02(bL Federal Rules of Civil Procedure by alleging that various actions of the state court were unfair and unjust.

In the third case filed by Mrs Polyak in 1985, this Court dismissed her complaint and enjoined her from filing any furture litigation regarding the sale of the Lawrence County property without express permission permission of the Court Polyak v Hamilton et al., No. 1:85-0116 M.D. Tenn. Nov. 13,1985). The 7th and 8th complaints submitted by Mrs Polyak earlier this yearwere not filed as a regular case. The Court instead directed the Clerk to assign a General Docket number to those cases and returnthe filing fee and unissued summons. Polyak v Lesnansky 2-89-X-16(M.D. Tenn Jan 31, 1989; Polyak v Buford Evans & Sons , 1:89-X-01(M.D. Tenn. Jan. 31, 1989).

Undeterred by this Court's unwillingness to allow her to file further complaints involving the same property dispute. Ms. Polyak has again submitted another complaint.Although she asserts authority under Rule 60(sic Rule 60.02 Federal Rules of Civil Procedure, she has a new complaint and summons.

of mrs. Polyak's allegations are reiterations if what has been contained in previous complaints. If Ms. Polyak seeks reopening of a previously filed case, a Rule 60 motion might be filed in this case. Rule 60 however, does not give plaintiff independent authority to file a separate original action(sic for fraud)

therefore, the Clerk is again directed not to file this complaint as a regular case but instead to assign a General Docket number and to mail copies of this memoradum and accompany ingorder to attorney General Charles Brunson. the Clerk id directed to return the check for $120.00 submitted with complaint, and unissued sumons to Mrs Polyak

Signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN AND
WILMA LESNANKSKY

V

EARLENE POLYAK

FILED 4 10 89

GENERAL DOCKET
1-89-X-06
JUDGE HIGGINS

ORDER

In accordance with the memorandum contemporaneosuly entered, the Clerk is directed not to file the complaint as a regular case. The Clerk is further directed to assign a General Docket case number to the complaint and to forward copies of this order and accompanying memorandun to those individuals whom Mrs Polyak has named as adverse parties in her complaint. Finally, the Clerk is directed to return the $120.00 check submitted as a filing fee with the complaint and unissued summons to Mrs. Polyak.

IT IS SO ordered.

Signed Thomas A Higgins.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN AND
WILMA LESNANSKY

FILED 4-10-89

V

GENERAL DOCKET NO.
1-89-X-06
JUDGE HIGGINS

EARLENE POLYAK

MEMORANDUM

On March 22, 1989, Ms. Polyak submitted this complaint as an original action along with the additional complaint styled Earlene Polyak v Frank Hulen and Wilma Lesnansky. On this complaint Ms. Polyak listed a docket no of 1:84-0082, which relates to a previously case in this Court, which was dismissed for lack of prosecution.

As in the complaint styled Earlene Polyak v Frank Hulen and wilma Lesnansky, Mrs Polyak states she believes that the case can be started over with a motion, but apparently in an ambudance of caution, she put her pleading in the form of a new complaint and submitted the requisite filing fee.

In her complaint, Ms. Polyak states that believes that this Court has power to entertain independent action to relieve her from judgment under Rule 60.02 of the Federal rules of civil procedure. Ms. Polyak misconstrues the procedure set forth in Rule 60(sic Rule 60.02(b) FRcivP)does not authorize separate independent action.

If Mrs Polyak has any justiciable(sic) issue it is appropriately raised under Rule 60,(sic R 60.02 FRcivP) as a motion in the previously filed case.

Therefore, the clerk is directed not to file this complaint as a regular case but instead to assign a it as a General case number. The Clerk is further directed to mail copies f the memorandum and accompanying and order to named adverse parties, The Clerk is directed to return $120.00 filing fee.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK

v

FRANK HULEN AND
WILMA LESNANSKY

FILED 4-7-89

General Docket No.
1-98-X-05
JUDGE HIGGINS

ORDER

In accordance with the memorandum contem entered the clerk is directed not to file the complaint submitted by Earlene Polyak. the Clerk is directed to assigne a general docket number to the complaint and forward copies of order to thos parties whom Ms. Polyak has named as defendants in complaint. The Clerk is directed to return the $120.00 check submit ted as a filing fee with the complaint and unissued summons.

It is so ORDERED.

Signed thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK — FILED 4-10-89

General docket No.
1-89-X-05

v

FRANK HULEN AND
WILMA LESNANSKY — Judge Higgins

MEMORANDUM

On March 22, 1989 the clerk received two new complaints by Ms. Polyak. These are the 11 th and 12th submitted to this Court, in which Ms. Polyak alleged facts surrounding a property dispute in Lawrence County, Tennessee and ancillary disputes subsequent to the state order partitioning (sale) the property.

On this complaint Ms. Polyak lists case no 1:84-0083 a previously filed case dismissed for failure to prosecute. Ms Ployak shows some reservation about whether her concerns should br raised in the context of a new complaint or as a subsequent pleading in the previously filed case.To cover all necessary bases,Ms Polyak submitted the required filing fee and summons for defendants.

Inasmuch as Ms Polyak has chosen to attempt to initiate a new proceeding, this Court will treat this pleading as a new complaint. Othan March 8, 1989, letter from the Clerk of the Tennessee Supreme Court and a reference to the fact her petition for rehearing was denied by the United States Supreme Court on February 21, 1989, Ms. Polyak has made no new allegations in this complaint that were not contained in original case.

If Ms. Polyak has any justifiable issue ro raise, the appropriate would be a motion filed in case No. 1-84-0083.The Clerk is directed not to file this complaint as a regular case but instead to assign it a general docket number. the clerk is directed to mail copies of order to parties Ms. Polyak has named as defendants. the Clerk is directed to return the check for $120.00, and unissued summons.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK FILED 1-30-89

v 1-89-X-01
JUSGE HIGGINS

BUFORD EVANS & SONS

ORDER

In accordance with the memorandum contemp entered the Clerk is directed not to file the complaint submitted by Earlene Polyak. The Clerk is directed to assign a general docket number to complaint and forward copies of this order and memorandum to those parties Ms. Polyak named as defendants. the Clerk is directed to return the check for filing fee submitted with complaint, unissued summons, and extra copies of complaint.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

EARLENE POLYAK FILED 1-30-89

v General Docket No.
1-89-X-01
JUDGE HIGGINS

BUFORD EVANS & SONS

MEMORANDUM

Plaintiff has submitted a complaint as styled above with a second complaint,styled Earlene polyak v wilma Lesnansky and Frank Hulen.

In addition th two complaints lodged with the Clerk on December 19, 1988, Ms.Polyak has previously filed seven cases, and eight petition that Clerk directed not to file.

Of seven cases, five alleged facts specifically concerning the disposition of property in Lawrence County and remaining two sought relief against attorneys involved in the property dispute.the eight unfiled submission involved property dispute.

the complaint styled Polyak v Evans &Sons reinterates many of the allegations relating

to cases filed in this Court. Any additional allegations relating to subsequesnt to filing of these complaints flow from actions taken by the parties and counsel in furtherance of state court action involving property question

On November 13, 1985 Ms Polyak was enjoined from filing further litigation in this Court regarding the sale of property or state litigation concerning sale without express permission of the court. Polyak v Hamilton (M.D. Tenn. 1:85-0116 Nov 13, 1985). Although the Court has expressely allowed Ms. Polyak to file complaints since that time, the current submission does nothing more than restate what she previously alleged. These claims are barred by resjudicata.

he Clerk is directed not to file this complaint, but to assign a general docket number and mail copies to parties named in Complaint.

Signed thomas A. Higgins

UNITED STATES COURT OF APPEALS
MIDDLE DISTRICT OF TENNESSEE

FRANK HULEN AND

v

EARLENE POLYAK

FILED 9-26-89

GENERAL DOCKET NO.
1-89-X-12

JUDGE HIGGINS

ORDER

In accordance with the memorandum contemporaneously entered, the Clerk is directed not to file the complaint submitted by Earlene Polyak as a regular case. The Clerk is further directed to assign a General Docket case number to the complaint and to return the $120.00 filing fee to Mrs. Polyak.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

V

EARLENE POLYAK

FILED 9-26-89

GENERAL DOCKET NO.
1-89-X-12

JUDGE HIGGINS

MEMORANDUM

The court is in receipt of a document entitled Complaint and Jury Demand to Reinstate or Reopen Case and Add Parties,received on September 14, 1989, along with appropriate copies,civil cover sheet, and a check for $120.00. bu submitting the filing fee of $120.00 and a civil cover sheet, it is apparent that plaintiff intends fo file a new action.

By submitting this latest document,Mrs Polyak is again attempting to refile what has already been adjudicated in this Court. In Frank Hulen et al, v Earlene Polyak 1 89-X-06 Mrs Polyak attempts to relitigate the same issues raised in Frank Hulen et al v Earlene Polyak1:75-0075(Earlene Polyak v Frank Hulen

1:84-0083 and Frank Hulen v Earlene Polyak 1:84-0082). The last two cases dismissed in in this Court for failure to prosecute and the judgment of this Court was affirmed on appeal in both cases. The case numbered 1:87-0075 (1:84-0082 & 1:84-0038) was dismissed because it was not properly removed from state court. The Court of appeals likewise affirmed.

The latest document which Ms. Polyak seeks to file as a new action is the 14th attempet to litigate the same issues raised in previous cases filed in and disposed of by this Court. Ms. Polyak's 12th and 13th attempts to refile the same, previously adjudicated cases were rejected by this court and the Clerk was directed not to file the cases as regular cases, but instead to assign general docket number abd return $12.00 filing See 1-89-X-06 and 1-X-05. There is no reason to treat this latest attempt to reinstate the same proceedings in any different fashion.

Signed Thomas A. Higgins

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

V

THOMAS ATACK AND
HENRY HENRY & STACK

FILED 6-22-88

No. 1:85-0125
JUDGE HIGGINS

ORDER

The Court is receipt of an Affidavit dated june 16, 1988, from Ms. Mary Mitchell.

The Clerk is directed to file this affidavit as a part of the record.

It is so ORDERED.

Signed Thomas A Higgins
United States District
Judge

AFFIDAVIT

To whom it may concern:

My name is Mary Mitchell. I live at R#3, Box 63B, Lawrenceburg, Tennessee 38464.

On or about September thru Nov. 1987, I was reading my newspaper,the lawrence County Advocate, when a familiar name cought my eye. The name of the person was Earlene Polyak. Realizing I had met her on three occasions in the past,I read more, out of curosity. The contents of the article revealed the intent to sale of some property that sounded familiar to me. In some correspondance in which I last received from Earlene Polyak some years ago.She had revealed to me that she owned a mobile home situated on some property herein Lawrence County, Tennessee.Upon meeting her again some six motnhs after I read the articel,I casually mentioned it to her, at this time she informed that she knew nothing of this. This is all the knowledge I have of this situation.

Signed Mary Mitchell

OUNTY OF LAWRENCE
TATE OF TENNESSEE

Sworn and subscribed before me this

8th day of June, 1988.

Iy commission expires: 8/18/88

Signed Mabel Evelyn Hedgepath

Notary Public.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

NO ENTRY DATE
Civil Action No. 1974

v

EARLENE POLYAK
Defendant

ORDER

Upon motion of Plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the Appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order:

Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at

public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and not out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less that three separate issues of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for case, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an

appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6% of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of $250.00, and shall pay from defendant's portion of the proceeds, all Court

costs incurred since this case initially filed. Thereafter, the Clerk and Master shall pay to parties hereto the net amount due each party pursuant to the Court's partition, subject, however, to payment by the Clerk and Master all debts of all creditors of record of any party who have a lein against any interest in said land as a result of leins against party's interest therein. Such leins of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further of the Court.

So ordered this 21st day of September, 1987.

Hon. Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:

Signed Robert Benton
Attorney for Plaintiffs

Lein placed by Robert Benton on December 12, 1984 NOTE BOOK 19, p. 270, Lein Book 7, pp. 497-499 by Genova Friaboo. This lein for

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiff

FILED DEC 19 1983

v

No. 1974

EARLENE POLYAK
Defendant

JUDGMENT

This cause came on to be heard on this the 19 day of December 19, 1983, before the Honorable Jim T. Hamilton, Judge upon the motion this day filed by Defendant, personaly on her own behalf, state and argumentof the Defendant personally from all which the Court finds thero to be no merit, and said motion is here and now overruled.

This 19th day of December, 1983.

Signed Jim T. Hamilton

CERTIFICATE OF SRVICE

The undersigned certifiesthat a true copy of this pleading addressed to said counsel at his office .

Signed Charles Holt
Boston Bates & Holt

State case dismissed on above UNAPPEALABLE JUDGMENT on April 24, 1984, NO FINAL ORDER.

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN, ET AL
Plaintiffs

FILLED OCT 19 1983

v

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge, Part II of the Circuit and Chancery Court in Lawrence County, Tennessee. While holding Chancery Court for Lawrence County, Tennessee, upon complaint heretofore filed in this cause, the Answer thereto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in memo dated August 11, 1983, the following:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eulan Hooper unless the parties agree on another real estate company.

All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of October, 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BUSTSON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack

COURT OF APPEALS OF TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiff

FILED APRIL 26 1984
Lawrence Equity

v EARLENE POLYAK

Defendant

ORDER

On March 20, 1984, and order was entered vy this Court granting a rehearing in respect to order entered on March 2, 2984, dismissing appeal for failure to timely file Notice of Aooeal with Trial Clerk;the parties having filed briefs for rehearing.

and it appearing trom the record that Appellant's motion to alter or amend was heard on December 19, 1983 that on January 3,1984, Appellant filed a notice of appeal from the final judgment entered on December 20, 1983, but that order overruling appellant's motion to alter or amend was not entered until January 10, 1984;

And it further appearing that this situation is governed by TRAP Ruees 4(b) and

and 21(b)*.

And it further appearing that the judgment from which appeals is sought is not a final judgment appealable as a right under TRAP Ruel 3in that said judgment orders the sale of property but does not confirm any sale or order transfer of title.

It is therefore ordered that this appeal be and it is hereby dismissed at the cost of Appellant without prejudice to review of any and all actions of the Trial court by appeal timely perfected and properly prosecuted from final judgment.

Signed Henry f. Todd
Samuel L Lewis
Ben Cantrell
Lewis H Conner Jr.

*Laws Not Cited